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13 UNITED STATES DISTRICT COURT
14 DISTRICT OF NEVADA
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16 COMPUTER SCIENCES CORPORATION,) 3:15-cv-00267-HDM-VPC
17 Plaintiff,)
18 vs.) ORDER
19 COGNIZANT TECHNOLOGY SOLUTIONS)
20 U.S. CORPORATION, and JOHN)
21 MAGUIRE, and DOES 1-10,)
22 inclusive,)
Defendants.)
_____)

23 Defendants John Maguire ("Maguire") and Cognizant Technology
24 Solutions U.S. Corporation ("Cognizant") (collectively
25 "defendants") have moved to dismiss this action on the basis of a
26 binding forum selection clause (#5). Plaintiff Computer Sciences
27 Corporation ("CSC") has opposed (#9), and defendants have replied
28 (#13). In CSC's opposition to the defendants' motion to dismiss,

1 CSC has applied in the alternative to transfer this action to the
2 District of Virginia.

3 CSC brings this action against Maguire, its former employee,
4 and Cognizant, Maguire's subsequent employer, alleging breach of
5 contract, tortious interference with contract, breach of fiduciary
6 duty, aiding and abetting breach of fiduciary duty, and concert of
7 action. CSC's claims are largely based on Maguire's alleged
8 violation of several restrictive covenants to which he was subject.

9 Maguire was employed by CSC from April 2013 to October 2014.
10 On April 19, 2013, Maguire signed a non-competition/non-
11 solicitation agreement that contained provisions preventing Maguire
12 from disclosing or misusing CSC's confidential information,
13 soliciting CSC's employees or customers for a period of time, and
14 competing against CSC for a period of time. (Compl. at 3 & Ex. 1).

15 During his employment with CSC, Maguire entered into five
16 stock option award agreements. (Compl. at 4 & Exs. 2-6). Each
17 agreement contained a recoupment and forfeiture provision requiring
18 Maguire to return to CSC the value of gains realized on exercised
19 options in the event he violated the restrictive covenants in the
20 agreement, including non-disclosure and non-use of confidential
21 information, non-solicitation of CSC employees, clients and
22 prospective clients for a period of time, and non-competition for a
23 period of time. *Id.* Each stock option agreement also contained a
24 permissive forum selection clause that read:

25 Any action, suit or proceeding to enforce the terms and
26 provisions of the Agreement, or to resolve any dispute or
27 controversy arising under or in any way relating to the
28 Agreement, may be brought in the state courts for the
County of Washoe, State of Nevada, United States of
America, and the parties hereto consent to the
jurisdiction of such courts.

1 (*Id.* Exs. 2-6).

2 After Maguire's employment with CSC was terminated, he and CSC
3 entered into a letter agreement dated November 6, 2014.¹ The
4 agreement modified the restrictive covenants in the original non-
5 competition/non-solicitation agreement and contained a merger and
6 integration clause that stated: "This Agreement supersedes any and
7 all prior oral and/or written agreements between the Company and
8 you, and sets forth the entire agreement between Company and you
9 regarding the subject matter described herein." (Mot. to Dismiss
10 Ex. A). The agreement also contained a forum selection clause,
11 which stated:

12 Any action arising out of or relating to any of the
13 provisions of this Agreement may, at the election of
14 either party, be brought and prosecuted only in the
15 courts of, or located in, the Commonwealth of Virginia,
and in the event of such election, the parties hereto
consent to the jurisdiction and venue of said courts.

16 *Id.*

17 Defendants argue that the forum selection clause in the
18 November 6, 2014, letter agreement mandates venue in the state or
19 federal courts of Virginia and therefore this action must be
20 dismissed pursuant to 28 U.S.C. § 1404(a). CSC opposes the motion
21 on several grounds, arguing that the forum selection clause of the
22 letter agreement does not cover all of its claims and that venue is
23 proper in Nevada under the forum selection clauses of the stock
24 option agreements.

25 In resolving a motion to dismiss or transfer based on a forum
26 selection clause, the court does not accept the pleadings as true,

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28 ¹ CSC and Maguire amended the letter agreement on January 19, 2015.
The amendment is immaterial to this motion.

1 may consider facts outside the pleadings, and must construe the
2 clause if necessary. See *Doe 1*, 552 F.3d at 1081-82; *Argueta v.*
3 *Banco Mexicano, S.A.*, 87 F.3d 320, 324 (9th Cir. 1996).

4 The forum selection clause in the November 6, 2014, letter
5 agreement is mandatory, requiring that at the election of either
6 party, an action "arising out of or relating to any of the
7 provisions" of the agreement be brought "only" in the courts "of,
8 or located in" the Commonwealth of Virginia. It cannot be (and
9 indeed has not been) disputed that this clause is valid and
10 applies, at a minimum, to CSC's claims that arise out of the letter
11 agreement. Thus, at least some of CSC's claims in this action are
12 subject to the Virginia forum selection clause.

13 CSC argues that its other claims - particularly those arising
14 out of the stock option award agreements - are not subject to the
15 Virginia forum selection clause. This argument is without merit.
16 The subject matter of the letter agreement was the resolution of
17 "all issues and obligations that exist or may exist between [CSC
18 and Maguire] concerning [Maguire's] employment and termination."
19 The forum selection clause applies to all claims that "aris[e] out
20 of or relat[e] to" the letter agreement. All of CSC's claims -
21 those based on the non-solicitation/non-compete agreements, those
22 based on the stock option award agreements, and those arising
23 purely in tort - relate to Maguire's employment and termination and
24 thus arise out of or relate to the letter agreement. Thus, all of
25 CSC's claims are covered by the forum selection clause of the
26 letter agreement. Moreover, pursuant to the letter agreement's
27 merger and integration clause, the letter agreement "supersedes any
28 and all prior oral and/or written agreements between [CSC and

1 Maguire], and sets forth the entire agreement between [CSC and
2 Maguire] regarding the subject matter described herein.” As the
3 stock option award agreements are prior written agreements between
4 CSC and Maguire that concern Maguire’s employment with CSC, the
5 forum selection clause of the letter agreement supersedes and
6 extinguishes the forum selection clauses of those agreements.²
7 Accordingly, pursuant to the parties’ agreed-upon forum selection
8 clause, this action must be tried in either the state or federal
9 courts in Virginia.³

10 Where a forum selection clause specifies another federal
11 court, it is properly enforced pursuant to § 1404(a). *Atlantic*
12 *Marine Constr. Co., Inc. v. U.S. Dist. Court for the W. Dist. of*
13 *Tex.*, – U.S. –, 134 S. Ct. 568, 579 (2013). Under § 1404(a), the
14 court “may transfer any civil action to any other district or
15 division where it might have been brought or to any district or
16 division to which all parties have consented” for “the convenience
17 of parties and witnesses, in the interest of justice. . . .”

18 Despite the clear language of § 1404(a), defendants have filed
19 a motion to *dismiss* pursuant to § 1404(a), arguing that while
20 transfer is the norm under the statute, dismissal is authorized by
21 the Supreme Court’s decision in *Atlantic Marine*, 134 S. Ct. 568.
22 Defendants’ argument is without merit. In *Atlantic Marine*, the
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24 ² CSC asserts that the court cannot make this finding at this point.
25 CSC’s argument relies on an incorrect assumption that defendants’ motion
26 should have been brought under Federal Rule of Civil Procedure 12(b)(6).
27 Defendants did not file their motion under that rule nor were they required
28 to do so.

³ Defendants concede this interpretation, which is proper under Ninth
Circuit case law. See *Doe 1 v. AOL LLC*, 552 F.3d 1077, 1081 (9th Cir.
2009); Mot. to Dismiss at 6.

1 Supreme Court held that the "appropriate way to enforce a forum-
2 selection clause pointing to a state or foreign forum is through
3 the doctrine of *forum non conveniens*." *Atlantic Marine*, 134 S. Ct.
4 at 580. However, § 1404(a) is "a codification of the doctrine of
5 *forum non conveniens* in which the transferee forum is within the
6 federal court system; in such cases, Congress has replaced the
7 traditional remedy of outright dismissal with transfer." *Id.* at
8 580 (emphasis added). Dismissal is therefore not proper where the
9 alternative forum is a federal district court. *See id.*; *Ravelo*
10 *Monegro v. Rosa*, 211 F.3d 509, 512-13 (9th Cir. 2000) ("Section
11 1404(a) thus serves as a statutory substitute for forum non
12 conveniens in federal court where the alternative forum is within
13 the territory of the United States. The doctrine of forum non
14 conveniens survives in federal court only when the alternative
15 forum is in a foreign country."); *Isdal-Giroux v. Linguisearch,*
16 *Inc.*, 2007 WL 865248, at *2 (D. Ariz. Mar. 20, 2007) (unpublished
17 disposition) ("Since the passage of 28 U.S.C. § 1404(a), a federal
18 court is without power to dismiss an action under the common law
19 doctrine of forum non conveniens where § 1404(a) is applicable,
20 since the remedy for an inconvenient forum under the statute is not
21 a dismissal but a transfer."). Because the forum selection clause
22 in this case authorizes suit in a federal district court, and a
23 transfer is available, a dismissal would not be appropriate.⁴

24
25 ⁴ To the extent defendants argue that dismissal would be appropriate
26 because the provision also identifies state courts, that argument is also
27 without merit. The provision at issue in *Atlantic Marine* also identified
28 both a state and a federal court, and there the Supreme Court applied §
1404(a). *See Atlantic Marine*, 134 S. Ct. at 575, 581 ("[T]he Court of
Appeals correctly identified § 1404(a) as the appropriate provision to
enforce the forum-selection clause in this case. . . .").

1 In deciding whether a transfer is appropriate under § 1404(a),
2 the court applies the same private and public factors as it does in
3 considering a motion to dismiss under the doctrine of *forum non*
4 *conveniens*. *Id.* However, where there is a valid forum selection
5 clause the plaintiff's choice of forum is not entitled to any
6 weight, and the private interests are deemed to "weigh entirely in
7 favor of the preselected forum." *Id.* at 581-82. The court
8 therefore considers only the public interest factors.⁵ *Id.* at 582.
9 Even so, public interest factors will "rarely defeat a transfer
10 motion." *Id.* at 582. "When the parties have agreed to a valid
11 forum-selection clause, a district court should ordinarily transfer
12 the case to the forum specified in that clause. Only under
13 extraordinary circumstances unrelated to the convenience of the
14 parties should a § 1404(a) motion be denied." *Id.* at 581. The
15 plaintiff bears the burden of showing its case should not be
16 transferred to the forum to which the parties agreed. *Atlantic*
17 *Marine*, 134 S. Ct. at 582.

18 CSC has not identified any unusual or extraordinary
19 circumstances that would justify denying defendants' motion to
20 transfer and has made no compelling argument that the public
21 factors weigh heavily against transfer. Therefore, transfer of
22 this action to the parties' designated forum is appropriate.

23 Accordingly, the defendants' motion to dismiss is **DENIED**. The
24 alternative application to transfer this action to the United
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26 ⁵ The public factors are: (1) the local interest of the lawsuit; (2)
27 the court's familiarity with governing law; (3) the burden on the local
28 courts and juries; (4) congestion in the court; and (5) the costs of
resolving a dispute unrelated to this forum. *Lueck v. Sundstrand Corp.*, 236
F.3d 1137, 1147 (9th Cir. 2001).

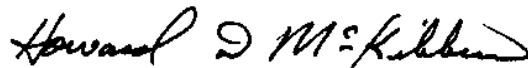
1 States District Court in the District of Virginia is **GRANTED**.

2 There are two federal district courts in the state of Virginia,
3 either of which would be a proper venue under the parties' forum
4 selection clause. The pleadings reflect that CSC's principal place
5 of business is in Falls Church, Virginia. Therefore, the court
6 will transfer this action to the Eastern District of Virginia,
7 where Falls Church is located. The parties may file any objections
8 to the transfer to the Eastern District of Virginia rather than the
9 Western District of Virginia on or before November 23, 2015.

10 Transfer of this action will be stayed pending the filing of any
11 timely objections. Should no objections be filed the action will
12 be transferred on November 25, 2015.

13 IT IS SO ORDERED.

14 DATED: This 18th day of November, 2015.

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16 UNITED STATES DISTRICT JUDGE
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